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SUPREME COURT OF THE UNITED STATES.

No. ~~183.~~ 1052 1929

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EMANUEL MYERS, PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF PENNSYLVANIA.

IN ERROR TO THE COURT OF QUARTER SESSIONS OF CUMBERLAND COUNTY, STATE OF PENNSYLVANIA.

GIDEON, Printer, 511 Ninth Street, Washington, D. C.

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GIDEON, Print.

[Petition.]

To the Chief Justice and Associate Justices of the Supreme Court of the United States, Emanuel Myers, a citizen of the State of Maryland, humbly complains:

That in the record of a suit on an indictment for kidnapping, prosecuted for and in the name of the Commonwealth of Pennsylvania, against him, the said Emanuel Myers as a defendant at the August session, in the year 1859, of the Court of Quarter Sessions for Cumberland county, in the said State of Pennsylvania, it being the highest Court of law of said State in which a decision in said suit could be had, whereof an authenticated transcript in the said Supreme Court of the United States will be produced, the following manifest errors have intervened, to wit: That the judgment in said Court is a judgment for the Commonwealth of Pennsylvania, whereas the said judgment should have been a judgment for the said Emanuel Myers, because on the trial of said indictment there was drawn in question the validity of an Act of Assembly passed by the General Assembly of the State of Pennsylvania, in the year 1847, on the ground of its being repugnant to the Constitution of the United States, and the decision was in favor of its validity.

Wherefore, the said Emanuel Myers prays the consideration of the justices of the said Supreme Court of the United States, and that the judgment aforesaid may be reversed.

J. MEREDITH,
Attorney for Emanuel Myers.

CUMBERLAND COUNTY, *ss.*

Before me, the subscriber, a justice of the peace in and for the said county, personally came John Coleman, who, being duly sworn, doth depose and say, that on or about the 10th day of June, 1859, John Butler, alias Westley Martin, a negro man about thirty years of age, and Emeline Butler, alias Emeline Martin, a negro woman about thirty years of age, and Elizabeth Butler, alias Elizabeth Martin, a negro girl of about ten years of age, were by force and violence taken and carried away from the county aforesaid, to a place out of this Commonwealth, with a design and intent that the said John, alias Westley, Emeline, and Elizabeth should be kept and detained as slaves, as this deponent verily believes. And deponent further saith, that a certain Gass, of the county aforesaid, and one Emanuel Myers, and a number of others, whose names are unknown to deponent, did, with force and violence, on the day and

year aforesaid, take and carry away the said John, alias Westley, Emeline, and Elizabeth, with the design and intent aforesaid, contrary to the form of the act of Assembly in such cases made and provided.

JOHN COLEMAN.

Sworn and subscribed before me, this 14th day of June, 1859.

W. B. MULLIN.

CUMBERLAND COUNTY, *ss.*

Before me, the subscriber, a justice of the peace in and for said county, personally came John Coleman, who, being duly sworn, doth depose and say, that on or about the 10th day of June, 1859, John Butler, alias Westley Martin, a negro man about thirty years of age, and Emeline Butler, alias Emeline Martin, a negro woman about thirty years of age, and Elizabeth Butler, alias Elizabeth Martin, about ten years of age, were by force and violence taken and carried away from the county aforesaid, to a place out of this Commonwealth, with a design and intent that the said John, alias Westley, Emeline, and Elizabeth, should be kept and detained as slaves, this deponent verily believes. And deponent further saith, that a certain Snyder Rupley and Henry Keefauver, of the county aforesaid, being the same persons spoken of by this deponent in his first information, as unknown to him at that time, did with force and violence on the day and year aforesaid, take and carry away the said John, alias Westley, Emeline, and Elizabeth, with the design and intent aforesaid, contrary to the form of the act of Assembly in such cases made and provided.

JOHN COLEMAN.

Sworn and subscribed before me, this 21st day of June, 1859.

W. B. MULLIN.

[Warrant of Arrest.]

CUMBERLAND COUNTY, *ss.*

[L. S.] The Commonwealth of Pennsylvania to Robert McCartney, sheriff of said county, Greeting:

Whereas, John Coleman, of said county, hath this day made information and complaint, on oath, before William B. Mullin, one of our justices of the peace in and for said county, who saith that on or about the 10th day of June, 1859, John Butler, alias Westley Martin, a negro man about thirty years of age, and Emeline Butler, alias Emeline Martin, a negro woman about thirty years of age, and Elizabeth Butler, alias Elizabeth Martin, a negro girl about ten years of age, were by force and violence taken and car-

ried away from the county aforesaid, to a place out of this Commonwealth, with a design and intent that the said John, alias Westley, Emeline, and Elizabeth, should be kept and detained as slaves, as this deponent verily believes. And deponent further saith, that a certain Gass, of the county aforesaid, and one Emanuel Myers, and a number of others, whose names are unknown to deponent, did, with force and violence, on the day and year aforesaid, take and carry away the said John, alias Westley, Emeline, and Elizabeth, with the design and intent aforesaid, contrary to the form of the act of Assembly in such cases made and provided; you are, therefore, hereby commanded to take the said Gass and Emanuel Myers, and bring them before the said William B. Mullin, forthwith, to answer the premises according to law. Herein fail not.

Witness my hand and seal this 14th day of June, in the year of our Lord one thousand eight hundred and fifty-nine.

W. B. MULLIN. [SEAL.]

[Warrant of Arrest.]

CUMBERLAND COUNTY, *ss.*

[L. S.] The Commonwealth of Pennsylvania to Robert McCartney, sheriff of said county, Greeting:

Whereas, John Coleman hath this day made information and complaint, on oath, before William B. Mullin, one of our justices of the peace, in and for said county, that on or about the 10th day of June, 1859, John Butler, alias Westley Martin, a negro man about thirty years of age, and Emeline Butler, alias Emeline Martin, about thirty years of age, and Elizabeth Butler, alias Elizabeth Martin, about ten years of age, were by force and violence taken and carried away from the county aforesaid, to a place out of this Commonwealth, with a design and intent that the said John, alias Westley, Emeline, and Elizabeth, should be kept and detained as slaves, this deponent verily believes. And deponent further saith, that a certain Snyder Rupley and Henry Keefauver, of the county aforesaid, being the same persons spoken of by this deponent in his first information as unknown to him at that time, did, with force and violence, on the day and year aforesaid, take and carry away the said John, alias Westley, Emeline, and Elizabeth, with the design and intent aforesaid, contrary to the form of the act of Assembly in such cases made and provided. You are, therefore, hereby commanded to take the said Snyder Rupley and Henry Keefauver, and bring them before the said William B. Mullin, forthwith, to answer the premises according to law. Herein fail not.

Witness my hand and seal this twenty-first day of June, in the year of our Lord, one thousand eight hundred and fifty-nine.

W. B. MULLIN. [SEAL.]

COMMONWEALTH
vs.
EMANUEL MYERS.
Justice Smith. Fees .80.

Charge for kidnapping, before W. B. Mullin, Esq., of South Middleton township, County of Cumberland.

John M. Woodburn and Michael Holcomb are jointly and severally held in $2,500 00, upon condition that Emanuel Myers shall personally appear at the next Court of Quarter Sessions of the Peace, to be held at Carlisle, in and for the County of Cumberland, to answer such matters and things as shall be objected to him on behalf of the Commonwealth, for kidnapping, and not depart said Court without license, then this recognizance to be void, else to be and remain in full force and virtue. July 13, 1859.

Coram, DAVID SMITH,
JOHN M. WOODBURN,
MICHAEL HOLCOMB.

Emanuel Myers, the defendant, held in $2,500 00, upon condition that he shall personally appear at the next Court of Quarter Sessions of the Peace, to be held at Carlisle, in and for the County of Cumberland, then and there to answer such matters and things as shall be objected to him, on behalf of the Commonwealth, for kidnapping, and not depart said Court without license, then this recognizance to be void, else to be and remain in full force and virtue. July 13, 1859.

E. MYERS,
Coram, DAVID SMITH, J. P.

CUMBERLAND COUNTY, *ss.*

I do certify that the above is a true copy of the record from my docket of all the proceedings had before me in the above case.

Witness my hand and seal at Carlisle, the 13th day of August, A. D. 1859.

DAVID SMITH, J. P. [SEAL.]

COMMONWEALTH
vs.
VALENTINE GASS.
Justice fees, .60.

Charge for kidnapping, before W. B. Mullin, Esq., of South Middletown township.

Valentine Gass held in $1,000 00, Michael Naugle held in $1,000 00, upon condition that the said Valentine Gass shall personally appear at the next Court of Quarter Sessions of the Peace, to be held at Carlisle, in and for the County of Cumberland, to answer such matters and things as shall be objected to him on

behalf of the Commonwealth, for kidnapping, and not depart said Court without license, then this recognizance to be void, else to be and remain in full force and virtue. September 19, 1859.

Coram, DAVID SMITH. [SEAL.]

Defendant discharged September 19th, 1859.

CUMBERLAND COUNTY.

[SEAL.] This is to certify that the above is a true transcript from my docket.

Witness my hand and seal at Carlisle, the 4th day of November, A. D. 1859.

DAVID SMITH, J. P.

COMMONWEALTH *vs.* SNYDER RUPLEY and HENRY KEEFAUVER. } Charged with kidnapping three negroes, on oath of John Coleman.

Justice's cost, - -	$ .85	Warrant issued to Sheriff McCartney, June 21st, 1859.
Sheriff McCartney,	3.44	June 22d, 1859, Snyder Rupley arrested, and bail entered.
	$4.29	

Snyder Rupley held in the sum of $1,000.

Matthew Moore, Esq., held in $1,000 for the appearance of Snyder Rupley at the next Court of Quarter Sessions, to be held at Carlisle, August 22d, 1859. June 25th, 1859, Henry Keefauver appeared, and entered bail for his appearance at the next Court.

Henry Keefauver held in the sum of $1,000.

Jacob Bear held in $1,000 for the appearance of Keefauver at the next Court.

Warrant returned, defendants in custody. So answers.

ROBERT McCARTNEY, Sheriff.

CUMBERLAND COUNTY, *ss.*

I do hereby certify that the foregoing is a true transcript of proceeding had before me in the above stated case.

Witness my hand at Papertown, the 15th day of August, A. D. 1859.

W. B. MULLIN.

COMMONWEALTH *vs.* HENRY KEEFAUVER. }

Henry Keefauver held in $1,000.

Tobias Sites held in $1,000.

To be levied of their goods and chattles, lands and tenements, respectively, upon condition that the said Henry Keefauver be and appear at the next Court of Quarter Sessions of the Peace, to be

held at Carlisle, in and for Cumberland county, on Monday the 14th day of November, 1859, to answer and abide, &c., and not depart said Court without leave, then this recognizance to be void, else in force.

Taken and acknowledged in open Court the 25th day of August, 1859.

Coram, D. S. CROFT,
Clerk Quarter Sessions.

COMMONWEALTH
vs.
SNYDER RUPLEY.

Snyder Rupley held in $1,000.
Matthew Moore held in $1,000.

To be levied of their goods and chattles, lands and tenements, respectively, upon condition that the said Snyder Rupley be and appear at the next Court of Quarter Sessions of the Peace, to be held at Carlisle, in and for Cumberland county, on Monday, the 14th day of November, 1859, to answer and abide, &c., and not depart said Court without leave, then this recognizance to be void, else in force.

Taken and acknowledged in open Court the 25th day of August, 1859.

Coram, D. S. CROFT,
Clerk Quarter Sessions.

COMMONWEALTH
vs.
EMANUEL MYERS.

Emanuel Myers held in $2,500.
William H. Miller held in $2,500.
Bradly T. Johnston held in $2,500.
M. Holcomb held in $2,500.

To be levied of their goods and chattles, lands and tenements, respectively, upon condition that the said Emanuel Myers be and appear at the next Court of Quarter Sessions of the Peace, to be held at Carlisle, in and for Cumberland county, on Monday, the 14th day of November, 1859, to answer and abide, &c., and not depart said Court without leave, then this recognizance to be void, else in force.

Taken and acknowledged in open Court the 25th day of August, 1859.

Coram, D. S. CROFT,
Clerk Quarter Sessions.

[A True Bill.]

August Sessions, in the year of our Lord one thousand eight hundred and fifty-nine.

CUMBERLAND COUNTY, *ss.*

1st count.

The grand inquest of the Commonwealth of Pennsylvania, inquiring in and for the County of Cumberland, on their oaths and affirmations, respectively do present:

That Emanuel Myers, late of said county, yeoman, George Strasburger, late of said county, yeoman, Isaiah Baker, late of said county, yeoman, William Smith, late of said county, yeoman, John A. Warfield, late of said county, yeoman, Snyder Rupley, late of said county, innkeeper, Henry Keefauver, late of said county, yeoman, Valentine Gass, late of said county, yeoman, on the tenth day of June, one thousand eight hundred and fifty-nine, at the county aforesaid, and within the jurisdiction of this Court, did unlawfully and by force and violence, take and carry away, and cause to be taken and carried away, from the county aforesaid, and from the Commonwealth of Pennsylvania aforesaid, to the State of Maryland, a place out of this Commonwealth, John Butler, a free negro man, Emeline Butler, a free negro woman, and Elizabeth Butler, a free negro child, with a design and intention of selling and disposing of, and of causing to be sold and disposed of, and of keeping and detaining, and of causing to be kept and detained, the said John Butler, Emeline Butler, and Elizabeth Butler, as slaves for life, in the State of Maryland aforesaid, and without and beyond the limits of the State of Pennsylvania aforesaid, contrary to the form of the Act of Assembly in such cases made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

2d count.

And the jurors aforesaid, on their oaths and affirmations aforesaid, do further present, that Emanuel Myers, late of said county, yeoman, George Strasburger, late of said county, yeoman, Isaiah Baker, late of said county, yeoman, William Smith, late of said county, yeoman, Snyder Rupley, late of said county, yeoman, Henry Keefauver, late of said county, yeoman, Valentine Gass, late of said county, yeoman, and John A. Warfield, late of said county, yeoman, on the tenth day of June, one thousand eight hundred and fifty-nine, at the county aforesaid, and within the jurisdiction of this Court, with force and violence, did unlawfully and by force and violence take and carry away and cause to be taken and carried away from the county aforesaid, and from the Commonwealth of Pennsylvania aforesaid, to the State of Maryland, a place out of this Commonwealth, John Butler, a free negro man, Emeline Butler, a free negro woman, and Elizabeth Butler, a free negro child, with a design and intention of selling and disposing of, and

of causing to be sold and disposed of, and of keeping and detaining, and of causing to be kept and detained, the said John Butler, Elizabeth Butler, and Emeline Butler, as slaves or servants for a term of years, in the State of Maryland aforesaid, and without and beyond the limits of the State of Pennsylvania aforesaid, contrary to the form of the Act of Assembly in such cases made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

3d count.

And the jurors aforesaid, on their oaths and affirmations aforesaid, do further present, that Emanuel Myers, late of said county, yeoman, George Strasburger, late of said county, yeoman, Isaiah Baker, late of said county, yeoman, William Smith, late of said county, yeoman, John A. Warfield, late of said county, yeoman, Snyder Rupley, late of said county, innkeeper, Henry Keefauver, late of said county, yeoman, and Valentine Gass, late of said county, yeoman, on the 10th day of June, one thousand eight hundred and fifty-nine, at the county aforesaid, and within the jurisdiction of this Court, with force and violence, did unlawfully take and carry away from and out of the county aforesaid, and out of the limits of the State of Pennsylvania, Emeline Butler, a free negro woman, and Elizabeth Butler, a free negro child, with the design and intention of selling and disposing of, and of causing to be kept and detained, the said Emeline Butler, and Elizabeth Butler, as slaves for life, in the State of Maryland, and beyond the limits of the State of Pennsylvania aforesaid, contrary to the form of the Act of Assembly in such cases made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

4th count.

And the jurors aforesaid, on their oaths and affirmations aforesaid, do further present, that Emanuel Myers, late of said county, yeoman, George Strasburger, late of said county, yeoman, Isaiah Baker, late of said county, yeoman, William Smith, late of said county, yeoman, John A. Warfield, late of said county, yeoman, Snyder Rupley, late of said county, innkeeper, Henry Keefauver, late of said county, yeoman, Valentine Gass, late of said county, yeoman, on the tenth day of June, one thousand eight hundred and fifty-nine, at the county aforesaid, and within the jurisdiction of this Court, with force and violence, did unlawfully take and carry away, and cause to be taken and carried away, from and out of the county aforesaid, and out of the limits of the State of Pennsylvania, to the State of Maryland, beyond the limits of the State of Pennsylvania, Emeline Butler, a free negro woman, and Elizabeth Butler, a free negro child, with the design and intention of selling and disposing of, and of causing to be kept and detained, the said Emeline Butler, and Elizabeth Butler, as slaves or servants for a term of years, in

the State of Maryland, and beyond the limits of the State of Pennsylvania aforesaid, contrary to the form of the Act of Assembly, in such cases made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

5th count.

And the jurors aforesaid, on their oaths and affirmations aforesaid, do further present, that Emanuel Myers, late of said county, yeoman, George Strasburger, late of said county, yeoman, Isaiah Baker, late of said county, yeoman, William Smith, late of said county, yeoman, John A. Warfield, late of said county, yeoman, Snyder Rupley, late of said county, innkeeper, Henry Keefauver, late of said county, yeoman, Valentine Gass, late of said county, yeoman, on the 10th day of June, one thousand eight hundred and fifty-nine, at the county aforesaid, and within the jurisdiction of this Court, with force and violence, did unlawfully take and carry away, and cause to be taken and carried away, from and out of the county aforesaid, and out of the limits of the State of Pennsylvania, to the State of Maryland, beyond the limits of Pennsylvania, Emeline Butler, a free negro woman, with the design and intention of selling and disposing of, and of causing to be kept and detained, the said Emeline Butler, as a slave for life, in the said State of Maryland, and beyond the limits of the State of Pennsylvania, contrary to the form of the Act of Assembly in such cases made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

6th count.

And the jurors aforesaid, on their oaths and affirmations aforesaid, do further present, that Emanuel Myers, late of said county, yeoman, George Strasburger, late of said county, yeoman, Isaiah Baker, late of said county, yeoman, William Smith, late of said county, yeoman, John A. Warfield, late of said county, yeoman, Snyder Rupley, late of said county, innkeeper, Henry Keefauver, late of said county, yeoman, Valentine Gass, late of said county, yeoman, on the tenth day of June, one thousand eight hundred and fifty-nine, at the county aforesaid, and within the jurisdiction of this Court, with force and violence did unlawfully take and carry away, and cause to be taken and carried away, from and out of the county aforesaid, and out of the limits of the State of Pennsylvania, Emeline Butler, a free negro woman, with the design and intention of selling and disposing of, and of causing to be sold and disposed of, and of keeping and detaining, and of causing to be kept and detained, the said Emeline Butler, as a slave, for a term of five years, in the said State of Maryland, and beyond the limits of the State of Pennsylvania, contrary to the form of the Act of Assembly, in

such cases made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

7th count.

And the jurors aforesaid, on their oaths and affirmations aforesaid, do further present, that Emanuel Myers, late of said county, yeoman, George Strasburger, late of said county, yeoman, Isaiah Baker, late of said county, yeoman, William Smith, late of said county, yeoman, John A. Warfield, late of said county, yeoman, Snyder Rupley, late of said county, innkeeper, Henry Keefauver, late of said county, yeoman, Valentine Gass, late of said county, yeoman, on the 10th day of June, one thousand eight hundred and fifty-nine, at the county aforesaid, and within the jurisdiction of this Court, with force and violence, did unlawfully take and carry away, and cause to be taken and carried away, from and out of the county aforesaid, and out of the limits of the State of Pennsylvania, to the State of Maryland, beyond the limits of the State of Pennsylvania, Emeline Butler, a free negro woman, with the design and intention of selling and disposing of, and of causing to be sold and disposed of, and of keeping and detaining, and of causing to be kept and detained, the said Emeline Butler, as a slave, for a term of years, in the said State of Maryland, beyond the limits of Pennsylvania, contrary to the form of the Act of Assembly in such cases made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

8th count.

And the jurors aforesaid, on their oaths and affirmations aforesaid, do further present, that Emanuel Myers, late of said county, yeoman, George Strasburger, late of said county, yeoman, Isaiah Baker, late of said county, yeoman, William Smith, late of said county, yeoman, Snyder Rupley, late of said county, innkeeper, Henry Keefauver, late of said county, yeoman, Valentine Gass, late of said county, yeoman, on the tenth day of June, one thousand eight hundred and fifty-nine, at the county aforesaid, and within the jurisdiction of this Court, under pretence of authority to claim John Butler, a negro man, and Emeline Butler, a negro woman, and Elizabeth Butler, a negro child, as fugitives from service or labor, violently and tumultuously did seize and carry away, in a riotous, violent, tumultuous, and unreasonable manner, and so as to disturb and endanger the public peace, the said John Butler, Emeline Butler, and Elizabeth Butler, out of the county aforesaid, and beyond the limits of the State of Pennsylvania, to the State of Maryland, contrary to the form of the Act of Assembly in such cases made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

9th count.

And the jurors aforesaid, on their oaths and affirmations aforesaid, do further present, that Emanuel Myers, late of said county, yeoman, George Strasburger, late of said county, yeoman, Isaiah Baker, late of said county, yeoman, William Smith, late of said county, yeoman, John A. Warfield, late of said county, yeoman, Snyder Rupley, late of said county, innkeeper, Henry Keefauver, late of said county, yeoman, Valentine Gass, late of said county, yeoman, on the tenth day of June, one thousand eight hundred and fifty-nine, at the county aforesaid, and within the jurisdiction of this Court, claiming John Butler, a negro man, Emeline Butler, a negro woman, and Elizabeth Butler, a negro child, as fugitives from service or labor, under pretence of authority derived by them, the said Emanuel Myers, George Strasburger, Isaiah Baker, William Smith, Snyder Rupley, Henry Keefauver, and Valentine Gass, from some person whose name is, to the jurors aforesaid, at present unknown, so to claim them, the said John Butler, Emeline Butler, and Elizabeth Butler, as fugitives from service or labor, violently and tumultuously did seize upon and carry away, in a riotous, violent, tumultuous and unreasonable manner, and so as to disturb and endanger the public peace, the said John Butler, Emeline Butler, and Elizabeth Butler, out of the county aforesaid, and beyond the limits of the State of Pennsylvania, to the State of Maryland, contrary to the form of the Act of Assembly in such cases made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

WM. J. SHEARER,
Dist. Att'y.

Witnesses,
EPHRAIM HEITSHEW,
JOHN MORRISON,
ROB'T MCCARTNEY,
JOHN BRISCO,
JACOB MUMA,
JACOB VANOSDEL,
REBECCA GILL,
JOHN FINKENBINDER,
MARTIN DOYLE,
RICHARD WOODS.

15th November, 1859.

Defendants, Emanuel Myers, Snyder Rupley, Henry Keefauver, and Valentine Gass, severally plead not guilty, et de hoc, &c. Att'y-Gen'l. Semiliter issue.

COMMONWEALTH OF PENNSYLNANIA
vs.
EMANUEL MYERS AND OTHERS.

Indictment for Kidnapping; in the Court of Quarter Sessions of Cumberland county.

When the jury was being impannelled, the defendants' counsel requested that they be interrogated, as follows:

First.—Have you formed or expressed any opinion as to the guilt of the defendants, or either of them, charged with kidnapping?

Second.—Have you any bias or prejudice on your mind for or against the persons, or either of them, as to their guilt or innocence of the matter whereof they stand charged?

Third.—Have you such scruples of conscience as would prevent your acquitting the prisoners indicted for kidnapping, or either of them, if it is shown that the proceeding on which the indictment is founded was the recapture and delivery to his owner of a fugitive slave, or slaves, under the provisions of the Constitution or laws of the United States?

The counsel for the Commonwealth objected, and assigned the following reasons:

1. Because the conscientious scruples of a juror may not be presumed to exist, and cannot be elicited by his examination in any case but one which charges a felony of death.

2. Because the offences charged are misdemeanors under a Pennsylvania statute, and have not necessarily any connection with the Constitution and laws of the United States.

3. Because such examination of a juror cannot be predicated upon a hypothetical case, which may or may not be proved as matter of defence.

The Court, after argument by counsel, overruled the objections for the following reasons:

Per curiam.

In the case of Commonwealth *vs.* Lesher, 17 S. & R. 156, it is ruled by the Supreme Court of Pennsylvania, that the rights of the Commonwealth and the defendant, to challenge for cause, are reciprocal. In that case it is said by the Judge, who delivered the opinion of the Court: "The law guards against all approaches of error and falsehood as much on the one side as the other; and in challenges for cause, no distinction is admitted between bias and predetermination of a juror against a defendant, or in his favor."

"The law, in every case, is scrupulous to prevent even the possibility of undue bias. The slightest ground of prejudice is sufficient. The prejudice itself need not be made out; the probability of it is enough.

"One related, though by marriage only, as remotely as the ninth degree to the defendant or prosecutor, may be challenged for that cause. Any one who, in any possible way, no matter how honestly, has been warped by any preconceived opinion which may affect his verdict, or has made up his mind what verdict he is to give, and declared it, is excluded. Nothing in the law can well be more extensive than this right of challenge, *propter affectum.* There is to be no inquiry whether the firmness of the man may not enable him to give a true verdict, when upon his oath, notwithstanding his previous opinions. The law makes no such experiment; but the moment that any such fact of relationship, of favor, enmity, bias, or pre-conceived opinion is made out, it removes the juror without hearing one word further.

"The scruples of a juror, whether real or not, amounting to a pre-determination to condemn or acquit a prisoner, disregarding the evidence or disregarding the law, if declared by the juror or otherwise made known, form a legal ground of principal challenge."

This care, with which the law guards the rights of the Commonwealth and of the defendant, in the selection of impartial jurors, is not peculiar to our own Commonwealth, but is as ancient as the time of Lord Bacon.

In Bacon's Abridgment, title Juries E, it is said: "If the juror has declared his opinion touching the matter, or has been chosen arbitrator by one side, or has done any act by which it appears that he cannot be impartial, as if he has eat or drank at the expense of either party, these are powerful causes of challenge. But though a juror has not given marks of partiality, yet there may be sufficient reason to suspect he may be more favorable to one side than the other; and this is a challenge to the favor. In these inducements to suspicion of favor, the question is, whether the juryman is indifferent as he stands unsworn; for a juryman ought to be perfectly impartial to either side, for otherwise his affection will give weight to the evidence of one party, and an honest but weak man be so much biassed as to think he goes by his evidence, when his affections add weight to the evidence.

"It hath been ruled to be a good cause of challenge on the part of the king, that a juror hath given his dogs the names of the king's witnesses."

The question proposed by defendants' counsel to the jurors is: Whether the conscience of the juror would prevent him from acquitting the prisoners, who are indicted for kidnapping, if it is

shown that the proceeding on which the indictment is founded was the recapture and delivery to his owner of a fugitive slave, or slaves, under the provisions of the Constitution and laws of the United States? In other words: Whether they would convict the defendants, although the evidence showed they acted in accordance with the Constitution and laws of the United States, and consequently had committed no criminal offence?

If this is not permitted, we may try the prisoners by jurors predetermined to convict, disregarding the law and the evidence.

This would be a mockery of justice. We know of no distinction between felonies of death, or imprisonment, or high misdemeanors, which frequently are punished more severely than petty felonies, in the qualification of jurors; or that the one may be tried by a partial, while the other requires an impartial jury. It would be cold consolation to a prisoner to know, that although he was condemned by a partial jury, he was not to be hanged, but merely imprisoned for a term of years.

The Commonwealth may challenge for cause a juror who declares he could not conscientiously agree to find a defendant guilty, though the evidence required such a verdict. And if the rule is reciprocal, we must certainly permit a defendant to challenge for cause a juror who cannot conscientiously acquit, although the law and the evidence may require such verdict. The interrogatories proposed may be put to the jurors.

The defendants offered in evidence a record from the Orphans' Court of Frederick county, Maryland, showing a petition of the agent of the executor of Elizabeth Warfield, and decree of that Court for the sale of Emeline and Elizabeth for a term of years.

This was objected to by the counsel for the Commonwealth:

1st. Because it does not purport to be a copy of a record, but purports to be "a true extract taken from the records."

2d. Because it contains a recital of another portion of a record not produced.

3d. It only professes to be an amendment of a record previously made in that Court.

The Court overruled the objections, and assigned the following reasons as the ground upon which it was admissible:

The Act of Congress of 1790 provides: "That the records and judicial proceedings of the Courts of any State shall be proved or admitted in any other Court within the United States, by the attestation of the clerk and the seal of the Court annexed, together with a certificate of the Judge, or presiding Magistrate, that the said attestation is in due form. And the said records and judicial proceedings, authenticated as aforesaid, shall have such faith and

credit given to them in every Court within the United States as they have, by law or usage, in the Courts of the State from whence the said records are or shall be taken."

The record offered is from the Orphans' Court of Frederick county, Maryland, and the attestation of the clerk is as follows:

"I hereby certify that the foregoing is a true extract, taken from the records of the proceedings of the Orphans' Court for Frederick county," to which is affixed the name of the clerk and seal of the Court.

To this attestation is annexed the certificate of the Presiding Judge of the Orphans' Court, certifying that the attestation of the clerk is in due form of law, and by the proper officer.

Exception is taken to the attestation by the clerk, that it does not purport to be a copy of a record, but purports to be a true extract taken from the records. And further, that by looking at the record it shows that it is not a full and entire record, but that former proceedings were had about the same subject matter, which form no part of the proceedings certified.

In support of the exceptions, decisions of the Supreme Court of Pennsylvania were cited, on the admission of the records of our County Courts upon the attestation of the clerk of the Court from which they are taken. Were this the record of a Court in Pennsylvania, it would be clearly inadmissible upon such a certificate by the clerk; for the Supreme Court of this State have ruled, that the certificate must show that it is a copy of the whole record, and that certified extracts are inadmissible.

But the cases are not analogous. The records of our State Courts are admitted upon the certificates of the clerks alone; for every judge is presumed to be conversant with the laws of his own State, and the form of attestation required to admit the records of a Court in another county.

But the Act of Congress is based upon the very reasonable supposition, that the Judge of a State Court may not be familiar with the laws of every State in the Union, and that the form of attestation of records in the several States may be different. Had it been intended that the form of attestation should be uniform, to admit the records of one State as evidence in another, Congress would have prescribed the form required. But they have not done so. All that is required by the Act of Congress is, the attestation of the clerk and seal of the Court, and the certificate of the Presiding Judge of the Court from which the record is produced, that the attestation is in due form. The certificate of the Presiding Judge is conclusive as to the form of attestation by the clerk. We cannot go behind it to examine the record—whether it be full and entire, or a part, or extracts from the records: nor can we examine whe-

ther the attestation of the clerk is in due form in any other mode, or by other evidence than the certificate of the Judge of the Court from which the record is produced. Were we to reject the records of other State Courts because the form of attestation was different from that required in our own State, it would be a virtual repeal of the Act of Congress, and require the Judge of a State Court to be acquainted with the form of attestation adopted in every State in the Union. To avoid this, the Act of Congress makes the certificate of the Judge conclusive evidence that the attestation is in due form.

The case before us is nearly similar to the case of Ferguson *vs.* Harwood, 7 Cranch 408.

The form of attestation in that case was:

"I hereby certify that the foregoing is truly taken from the records of the proceedings of Prince George's County Court."

There, as here, the objection was, that it did not appear to be a full copy of the record of all the proceedings in the case.

But Mr. Justice Story dismissed the exception in a breath, without any reference to the form of attestation.

After reciting the Act of Congress, requiring the certificate of the Presiding Judge that the attestation of the clerk was in due form, he remarked: "It is conceded, that such a certificate accompanied the record objected to. It is, therefore, a case within the words of the law; and the Court below were precluded from receiving any other evidence, to show that the attestation was not in due form. The record, so authenticated, was properly admitted in evidence."

The certificate of the Presiding Judge to the record offered, is in the form required by the Act of Congress. We cannot go beyond it to inquire the form of attestation adopted by the Courts of Maryland, and must therefore admit the record offered.

THE COMMONWEALTH OF PENNSYLVANIA
vs.
MYERS, RUPLY, AND OTHERS.

The defendants are indicted for kidnapping, and violently and tumultuously carrying away certain persons in the bill named, under the Act of Assembly of Pennsylvania.

The jurors having been all first called into the box, the defendants' counsel propose to propound to each of them, with a view of eliciting their conscientious scruples with regard to the conviction of the defendants, if it be shown that the proceeding upon which the indictment is founded was the recapture and delivery, to his

owner of a fugitive slave, or slaves, under the provisions of the Constitution and Laws of the United States.

The counsel for the Commonwealth object to this:

1. Because the conscientious scruples of a juror may not be presumed to exist, and cannot be elicited by his examination in any case but one which charges a felony of death.

2. Because the offences charged are misdemeanors under a Pennsylvania statute, and have not necessarily any connection with the Constitution or Laws of the United States.

3. Because such examination of a juror cannot be predicated upon a hypothetical case, which may or may not be proved as matter of defence.

WATTS & PARKER,
A. B. SHARP,
Attorneys for Commonwealth.

The juror, having propounded to him the first interrogatory, answers as follows:

I have formed and expressed an opinion upon the rumors which I have heard and read in the newspapers, and conversation respecting the case to be tried. It is such an opinion as any man must have, who would read and hear the rumors of the case.

Upon being asked by the Commonwealth:

Is your opinion, so formed and expressed, such as that it would interfere with your forming and giving an impartial verdict on the evidence?

Answer. It would not.

The challenge for cause disallowed by the Court.

J. H. GRAHAM,
Pres't Judge.

The juror was afterward challenged peremptorily.

The defendant, Myers, offers to prove by D. H. Maynard and other witnesses, that the woman, Emeline, and the child, Elizabeth, resided with Jno. A. Warfield from the time of E. Warfield's death up to 1856, and that, then, she was allowed by Warfield to reside with her husband, Resin, a short distance from said Warfield's house, but not on his property; and propose to follow this with proof, that Warfield was the duly appointed agent of the executor of E. Warfield.

Objected:

1. A residence with John A. Warfield proves nothing. That John A. Warfield allowed her to do anything, is but his declaration; he is a defendant, against whom a true bill has been found. His agency has not been proved, nor by whom that agency was given to him. That Elizabeth Warfield had any executor is not proved.

The offer, then, amounts to nothing more than the declarations of John A. Warfield, who—so far as anything has been proved in this case—is a stranger to the subject.

[Copy of Charge to the Jury.]

To the Jury:

The defendants are indicted under an Act of Assembly of this Commonwealth, passed the 3d of March, 1847, the first section of which provides: "That if any person or persons shall, from and after the passage of this act, by force or violence take and carry away, or cause to be taken or carried away, and shall by fraud or false pretence entice or cause to be enticed, or shall attempt to take, carry away, or entice any free negro or mulatto from any part or parts of this Commonwealth to any other place or places whatsoever out of this Commonwealth, with a design and intention of selling and disposing of, or of causing to be sold, or of keeping and detaining, or of causing to be kept and detained such free negro or mulatto as a slave or servant for life, or for any term whatsoever, every such person or persons, his or their aiders and abettors, shall be deemed guilty of a high misdemeanor, and on conviction thereof," &c.

The seven first counts in the indictment are under this section of the act, and the two last counts are under the fourth section of the same act, which makes it an indictable offence for any person or persons claiming any negro or mulatto as a fugitive from service or labor, violently and tumultuously to seize upon and carry away, or attempt to seize and carry away in a riotous, violent, tumultuous, and unreasonable manner, and so to disturb or endanger the public peace, any negro or mulatto within this Commonwealth.

It is admitted that Emanuel Myers, one of the defendants upon trial, with others, seized and carried into Maryland the negroes named in the indictment; and the defence—so far as Myers is concerned—is, that they were slaves and fugitives from labor, and his conduct in seizing and returning them to their owners in Maryland was in accordance with the Constitution of the United States, which is paramount to all State legislation.

In the second section of the fourth Article of the Constitution of the United States, there is this provision:

"No person held to service or labor in one State, under the laws thereof, escaping into another State, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up on claim of the party to whom such service or labor may be due."

Under this Article it has been ruled by the Supreme Court of the United States, that the owner of a fugitive slave, by himself, his agent or attorney, may follow and seize and recapture his slave wherever he may be found, in any State of the Union, if he can do so without any breach of the peace, or illegal violence. In the case of Prigg *vs.* The Commonwealth of Pennsylvania, 16 Peters' Rep. 613, Mr. Justice Story, who delivered the opinion of the Court, after referring to the Common Law right of recapture, says:— "Upon this ground we have not the slightest hesitation in holding, that under and in virtue of the Constitution the owner of a slave is clothed with entire authority, in every State in the Union, to seize and recapture his slave, wherever he can do it without any breach of the peace, or any illegal violence. In this sense and to this extent this clause of the Constitution may properly be said to execute itself, and to require no aid from legislation, State or National."

The inquiry, then, necessarily arises: Were these negroes fugitives from service or labor, or were they free? That they were seized and carried into Maryland by Emanuel Myers and others, not now upon their trial, is clearly proved, and not denied.

And here we consider it proper to say to you, that we do not consider the evidence would at all justify the conviction of Rupley, Keefauver, and Gass, three of the defendants now upon trial; and, as we understand the counsel of the Commonwealth, their conviction is not pressed.

If you concur with us in this opinion, it will limit your inquiry to the guilt or innocence of Emanuel Myers, the only other defendant now upon trial.

The evidence shows that there were three negroes seized and carried to Maryland—John Butler, Emeline Butler, and Elizabeth Butler. We think it is satisfactorily proved that John was a slave, and for recapturing him there ought not to be a conviction. This is charged in the two first counts in the indictment; the other counts charge defendants with taking Emeline, and her daughter Elizabeth.

The defence rests upon the allegation, that Emeline and Elizabeth were slaves in Maryland, and fugitives from service. If it is proved that these negroes were slaves when they left Maryland and came to Pennsylvania, there can be no conviction of any of the defendants.

The evidence establishes the fact, that Emeline and Elizabeth were the slaves of Elizabeth Warfield, who died prior to 9th Janu-

ary, 1855. On that day her will was proved, by which she manumitted all her slaves, including Emeline and Elizabeth.

Under the laws of Maryland slaves may be manumitted by will, when such manumission does not prejudice the creditors of the testator.

To avoid the effect of the manumission under the will of Elizabeth Warfield, the counsel of the defendants have produced the record of the Orphans' Court of Frederick county, Maryland, and the inventory of personal property and statement of debts filed against the estate of Elizabeth Warfield, deceased. The record produced and in evidence shows, that on the 3d of February, 1858, the Orphans' Court, upon the petition of John A. Warfield, agent of Richard D. Warfield, executor of Elizabeth Warfield, deceased, decreed a sale of those negroes, Emeline and Elizabeth, for a term of years, for the payment of the debts of their former mistress, Elizabeth Warfield, deceased.

This record is evidence that there were debts of Elizabeth Warfield, for the payment of which the Court decreed a sale of the slaves manumitted by her will; but it is not evidence that the negroes ordered to be sold were at that time slaves. If before that order and decree of Court, and after the death of Elizabeth Warfield, which occurred prior to 9th January, 1855, her executor permitted Emeline and Elizabeth to go at large and free, and exercise and enjoy all the rights and privileges of free negroes up until February, 1858, and this under the manumission in the will of Elizabeth Warfield, "the executor cannot recall such assent by his own act, nor can it be revoked under an order of the Orphans' Court of Maryland, for the sale of all the personal estate of testator, that Court not having jurisdiction of the question of manumission."

It thus becomes an important question for you, whether Emeline and Elizabeth were permitted to enjoy freedom, uncontrolled by any exercise of dominion over them, from 1855 to 1858, when they left Maryland and came to Pennsylvania. If you find these to be the facts, then, under the decision of the Supreme Court of the United States, in Fenwick *vs.* Chapman, 9 Peters' Reports, 480, the executor had no right to reclaim them and reduce them to a state of slavery.

On the contrary, if they remained from the death of their mistress, Elizabeth Warfield, up until they left Maryland under the power, control, and dominion of the executor, he exercising such power and control over them as is exercised in Maryland by a master over his slave or servant for years, then, under the evidence in this case, they could not justify their leaving his service and control and coming to Pennsylvania, under the clause of manumission in the will of Elizabeth Warfield; but the executor, either by himself or agent, might re-take them wherever found, and return them to his service and dominion. Under this aspect of the case, if you

find the fact that they remained under the power and subject to the control and service of the executor, and were not permitted to go at large and free, then the defendants ought not to be convicted; for, as we have said, the executor would have the right and power to pursue and re-take, and reduce them to his service.

There is another aspect of this case we deem proper to bring to your notice. Myers had authority from the agent of the executor, ratified by the executor before the negroes were taken, to take and return them to Maryland.

If Myers acted honestly and in good faith, under the belief that these negroes were the property of the executor, and recaptured and removed them,—not to sell them into slavery; not to retain them as slaves, or cause them to be retained, wrongfully and illegally, but to restore them to Mr. Warfield, to whom he had good reason to believe, and did believe, they owed service,—then he ought not to be convicted. The *malo animo*, the evil intent, which is a necessary ingredient to constitute a criminal offence, would be wanting.

On the contrary, should you find that these negroes were free, and in the full and uncontrolled enjoyment of liberty before they left Maryland, and that Myers knew, or by ordinary care and inquiry would have obtained a knowledge of that fact; and that he and Warfield concocted and planned and entered into an arrangement, that Myers, as the agent of Warfield, was to take and return Emeline and Elizabeth to Warfield for their mutual gain and benefit, and for the purpose of illegally again reducing them to involuntary servitude, as contended for by the Commonwealth's counsel, under those circumstances Myers would be guilty of kidnapping, as charged in the indictment.

There is another branch of defence in this case, assumed by the learned counsel who appears on behalf of the State of Maryland. The position taken is, that under the Constitution of the United States a claim of property is all that is required to enable the claimant to remove the negro claimed to the residence of the claimant, and that the Act of Assembly on which this indictment is framed, is unconstitutional.

The provision of the Constitution of the United States is, that a person held to service or labor in one State, under the laws thereof, escaping into another State, shall be delivered up on claim of the party to whom such service or labor may be due.

This certainly requires more than a claim, to bring the case within the Constitutional provision.

There must, first, be a holding to service or labor in one State, *under the laws thereof;* 2d. An escape by the person held, into another State; and, 3d. A claim by the party, to whom service or labor may be due. A mere claim, without evidence that the negro was held to service or labor under the laws of the State from which

he came, or that the claim was by a party to whom service or labor was due, will not bring the case within the Constitution of the United States.

We cannot, therefore, discover any conflict between the Constitution and the Act of Assembly of this State, which punishes, as a criminal offence, taking and carrying away a free negro or mulatto from Pennsylvania, for the purpose of selling or retaining him as a servant or slave.

The Constitution of the United States authorizes and permits the citizens of every State to reclaim and carry away their property of every kind and sort, including servants and slaves, wherever found. But we can discover nothing in that instrument to prevent the punishment as criminals, by any State, of persons who seize and carry into servitude the free residents of a sovereign State.

To the Honorable the Judges of the Orphans' Court for Frederick County:

The petition of John A. Warfield, agent for Richard D. Warfield, executor of the last will and testament of Elizabeth Warfield, respectfully shows, that Elizabeth Warfield died seized, and the owner of a lot of negroes, to whom, by her last will and testament, she bequeathed their freedom; that your petitioner, thinking it would be necessary for the payments of the debts of said testatrix, obtained from your Hon. Court an order for the sale of two of said negroes, as slaves for life, and sold them as such; that the purchasers have never had possession of said negroes, and have never complied with the terms of sale, and your petitioner now finds that it will not be necessary, for the payment of the debts of said testatrix, to sell said negroes as slaves for life, but that he can pay the residue of said testatrix's debts by selling the whole of said negroes for a short term of years, and that by so doing the intention and wishes of said testatrix can be gratified as nearly as will be consistent with the rights of her creditors, and equal justice done to the whole of said negroes. Your petitioner, therefore, prays your Honors to rescind said previous order of sale, and to pass an order authorizing the sale of said negroes, for such a term of years as will be sufficient for the payment of said debts and your petitioner will ever pray, &c.

GRAYSON EICHELBERGER,
Attorney for Petitioner.

In the Orphans' Court for Frederick County:
December Term, 1857.

The Court having read and considered the petition of John A. Warfield, it is thereupon, this 3d day of February, 1858, by the Orphans' Court for Frederick county, and by the authority of said Court, ordered that the order heretofore passed on the 11th day of

December, 1855, for the sale of negroes, Elizabeth and Charles, as slaves for life, be and the same is hereby rescinded and revoked; and that said Richard D. Warfield, as executor of Elizabeth Warfield, be and he is hereby authorized and directed to sell, at private sale, the following negroes, for the following periods, viz: Emeline, for a period not exceeding five years; Jemima, for a period not exceeding five years; Elizabeth, for a period not exceeding twenty-eight years; and the terms of his sale shall be cash, or a credit of four months on notes, with approved security, bearing interest, as shall be deemed most advantageous.

WILLIAM LOWE,
JOHN MONTGOMERY,
JAMES A. GALLAHER.

MARYLAND, FREDERICK COUNTY, *sct.*

I hereby certify that the foregoing is a true extract taken from the records of the proceedings of the Orphans' Court for Frederick county.

In testimony whereof I hereunto set my hand and affix the seal of said Orphans' Court for Frederick county, this 27th day of June, 1859. Test,

A. P. KESSLER,
Register of Wills,
and ex-officio Cl'k of the Orphans' Court for Freder'k co.

STATE OF MARYLAND, FREDERICK COUNTY, *to wit:*

I, B. Amos Cunningham, Presiding Judge of the Orphans' Court in and for the county aforesaid, do hereby certify that A. P. Kessler is Register of Wills of the county aforesaid, that the foregoing attestation of his as Register is in due form of law, and by the proper officer, and that all due faith and credit is and ought to be given to his attestation as Register aforesaid. In testimony whereof, I hereunto set my hand and seal, this 27th day of June, 1859.

B. A. CUNNINGHAM, [L. S.]
Chief Judge of the Orphans' Court of Frederick county, Md.

At a Court of Quarter Sessions of the Peace, holden at Carlisle, in and for Cumberland county, Pennsylvania, before the Hon. James H. Graham, President Judge, and Samuel Woodburn and Michael Cocklin, Esquires, his Associates, on Monday, 22d day of August, 1859, the following proceedings were had, to wit:

Commonwealth,
vs.
EMANUEL MYERS, GEORGE STRASBURGER, ISAIAH BAKER, WILLIAM SMITH, JOHN A. WARFIELD, SNYDER RUPLEY, HENRY KEEFAUVER, VALENTINE GASS.

Kidnapping, 23d August, 1859; "True Bill," 25th August, 1859; continued now, to wit: 16th November, 1859, defendants, Emanuel Myers, Snyder Rupley, Henry Keefauver, and Valentine Gass, being arraigned, pleads not guilty, *et de hoc*, District Attorney *similiter* issues. Whereupon a jury of the county being called, came, to wit: Frederich Zeigler, Abraham Bretz, William Clark, Henry Doner, Samuel Abrims, Samuel Green, Henry Ewalt, Joseph C. Lindsey, Abraham Spotts, Moses Connor, Joseph Heberlig, and William Glover, who, being severally balloted for, elected, empanneled, sworn, and affirmed, respectfully do say they find the defendant, Emanuel Myers, not guilty on the first two counts in the indictment, but guilty in manner and form as he stands indicted on all the other counts in the indictments; and Snyder Ruply, Henry Keefauver, and Valentine Gass, not guilty. At the request of defendant's counsel the jury were polled, and the following interrogatory put to each juror, by the Court, at the request of defendant's counsel: "Do you find the defendant, Emanuel Myers, guilty or not guilty, on all or any of the counts of the indictment?" When they severally, and each for himself, answered not guilty on the first two counts in the indictment, but guilty on all the other counts of the indictment.

21st November, 1859. The defendant moves for a new trial in this case, and files the following reasons:

1st. The Court erred in their instruction to the jury, in regard to the effect of the negroes going at large, and in regard to their freedom, as willed by Elizabeth Warfield.

2d. The verdict was contrary to the evidence, and all doubts were thrown against the prisoner instead of in his favor.

3d. The jury found the defendant guilty without determining whether the woman and child were free or slaves.

4th. In polling and examining the jury, when they returned with their verdict, the questions were not put in proper and legal form.

5th. After the defendant made out a *prima facia* case of slavery as to the woman and child, this Court had no right to go further, but should have dismissed the case.

W. H. MILLER,
Attorney for E. MYERS.

21*st November*, 1859.

And now, to wit: 12th December, 1859, the motion for a new trial is withdrawn by defendant's counsel, and judgment is entered upon the verdict; and the defendant, Emanuel Myers, is directed to enter into recognizance, in two thousand dollars, for his appearance at the next Court of Quarter Sessions, to be held in and for Cumberland county, commencing on Monday, the 9th January, 1860.

BY THE COURT.

Now, to wit: 13th January, 1860. The recognizances forfeited.

BY THE COURT.

STATE OF PENNSYLVANIA, COUNTY OF CUMBERLAND, *ss.*

I, Daniel S. Croft, Clerk of the Court of Quarter Sessions of the Peace, in and for said county and State, do hereby certify the foregoing to be the original papers in the case of the Commonwealth *vs.* Emanuel Myers and others, No. 1 August Term, 1859; indictment for Kidnapping, in the Court of Quarter Sessions of the Peace, in and for said county, together with a true and full copy of the docket entries, records, judgment, proceedings, and all things concerning the same, as fully and entire as the same remains in the office of the clerk of said Court. In testimony whereof, I have hereunto set my hand, and affixed the seal of said Court, at Carlisle, the 1st day of March, A. D. 1860.

SEAL OF CUMBERLAND COUNTY QUARTER SESSIONS.

D. S. CROFT, Cl'k.

TO THE HONORABLE, THE JUDGES OF THE SUPREME COURT OF THE UNITED STATES:

The record, process, proceedings, and judgment within mentioned, with all things touching the same, as full and entire as before us they remain, in a certain schedule to this writ annexed, before the Justices of the Supreme Court of the United States, at the day and place within mentioned, we certify and send as within we are commanded.

J. H. GRAHAM,
President Judge.

1*st March*, 1860.

[Writ of Error.]

UNITED STATES OF AMERICA, *ss.*

The President of the United States to the Honorable the Judges of the Court of Quarter Sessions of Cumberland County, State of Pennsylvania, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Quarter Sessions, before you, or some of you, being the highest Court of Law or Equity of the said State, in which a decision could be had in the said suit between the Commonwealth of Pennsylvania, plaintiff, and Emanuel Myers, defendant, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or, wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or, wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission

Kidnapping, 23d August, 1859; "True Bill," 25th August, 1859; continued now, to wit: 16th November, 1859, defendants, Emanuel Myers, Snyder Rupley, Henry Keefauver, and Valentine Gass, being arraigned, pleads not guilty, *et de hoc*, District Attorney *similiter* issues. Whereupon a jury of the county being called, came, to wit: Frederich Zeigler, Abraham Bretz, William Clark, Henry Doner, Samuel Abrims, Samuel Green, Henry Ewalt, Joseph C. Lindsey, Abraham Spotts, Moses Connor, Joseph Heberlig, and William Glover, who, being severally balloted for, elected, empanneled, sworn, and affirmed, respectfully do say they find the defendant, Emanuel Myers, not guilty on the first two counts in the indictment, but guilty in manner and form as he stands indicted on all the other counts in the indictments; and Snyder Ruply, Henry Keefauver, and Valentine Gass, not guilty. At the request of defendant's counsel the jury were polled, and the following interrogatory put to each juror, by the Court, at the request of defendant's counsel: "Do you find the defendant, Emanuel Myers, guilty or not guilty, on all or any of the counts of the indictment?" When they severally, and each for himself, answered not guilty on the first two counts in the indictment, but guilty on all the other counts of the indictment.

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2d. The verdict was contrary to the evidence, and all doubts were thrown against the prisoner instead of in his favor.

3d. The jury found the defendant guilty without determining whether the woman and child were free or slaves.

4th. In polling and examining the jury, when they returned with their verdict, the questions were not put in proper and legal form.

5th. After the defendant made out a *prima facia* case of slavery as to the woman and child, this Court had no right to go further, but should have dismissed the case.

W. H. MILLER,
Attorney for E. MYERS.

21*st November*, 1859.

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BY THE COURT.

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BY THE COURT.

STATE OF PENNSYLVANIA, COUNTY OF CUMBERLAND, *ss.*

I, Daniel S. Croft, Clerk of the Court of Quarter Sessions of the Peace, in and for said county and State, do hereby certify the foregoing to be the original papers in the case of the Commonwealth *vs.* Emanuel Myers and others, No. 1 August Term, 1859; indictment for Kidnapping, in the Court of Quarter Sessions of the Peace, in and for said county, together with a true and full copy of the docket entries, records, judgment, proceedings, and all things concerning the same, as fully and entire as the same remains in the office of the clerk of said Court. In testimony whereof, I have hereunto set my hand, and affixed the seal of said Court, at Carlisle, the 1st day of March, A. D. 1860.

D. S. CROFT, Cl'k.

TO THE HONORABLE, THE JUDGES OF THE SUPREME COURT OF THE UNITED STATES:

The record, process, proceedings, and judgment within mentioned, with all things touching the same, as full and entire as before us they remain, in a certain schedule to this writ annexed, before the Justices of the Supreme Court of the United States, at the day and place within mentioned, we certify and send as within we are commanded.

J. H. GRAHAM,
President Judge.

1*st March*, 1860.

[Writ of Error.]

UNITED STATES OF AMERICA, *ss.*

The President of the United States to the Honorable the Judges of the Court of Quarter Sessions of Cumberland County, State of Pennsylvania, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Quarter Sessions, before you, or some of you, being the highest Court of Law or Equity of the said State, in which a decision could be had in the said suit between the Commonwealth of Pennsylvania, plaintiff, and Emanuel Myers, defendant, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or, wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or, wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission

held under the United States, and the decision was against the title, right, privilege, or exemption, specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Emanuel Myers, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the Hon. Roger B. Taney, Chief Justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and fifty-nine.

WM. THOS. CARROLL,

Clerk of the Supreme Court of the United States.

Allowed by R. B. Taney, Chief Justice of the Supreme Court, February 15, 1860.

[Bond to Prosecute.]

Know all men by these presents, that I, Jonathan Meredith, am held and firmly bound unto the Commonwealth of Pennsylvania, in the full and just sum of five hundred dollars, to be paid to the said Commonwealth of Pennsylvania, its certain attorney, executors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this fifteenth day of February, in the year of our Lord one thousand eight hundred and sixty.

Whereas, lately, at a Court of Quarter Sessions for the County of Cumberland, in the State of Pennsylvania, in a suit depending in said court, between the said Commonwealth of Pennsylvania, plaintiff, and Emanuel Myers, defendant, judgment was rendered against the said Emanuel Myers; and the said Emanuel Myers having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Commonwealth of Pennsylvania, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of December next.

Now the condition of the above obligation is such, that if the said Emanuel Myers shall prosecute his said writ to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

(Signed,) JON. MEREDITH. [SEAL.]

Approved by R. B. Taney, February 15, 1860.

[Citation and Service.]

THE UNITED STATES OF AMERICA,

To the Commonwealth of Pennsylvania, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the United States, wherein Emanuel Myers is plaintiff in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this fifteenth day of February, in the year of our Lord one thousand eight hundred and sixty.

R. B. TANEY.

February 15, 1860.

STATE OF PENNSYLVANIA, }
County of Cumberland. } *ss.*

On this twenty-fourth day of February, in the year of our Lord one thousand eight hundred and sixty, personally appeared George Zinn before me, the subscriber, Daniel S. Croft, Clerk of the Court of Quarter Sessions of the Peace, &c., for said county and State, and makes oath that he delivered a true copy of the within citation to his Excellency the Governor of the Commonwealth of Pennsylvania, William F. Packer, on Wednesday, the 22d February, A. D. 1860.

GEO. ZINN.

Sworn to and subscribed the 24th February, A. D. 1860, before me,

per DANIEL S. CROFT, Clerk,

JOHN M. GREGG, Deputy.